



सत्यमेव जयते

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Duration	Day	Month	Year

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN) NARMADA, AT - RAJPIPLA**

MOTOR ACCIDENT CLAIM PETITION NO.62 OF 2022

Exh.____.

PETITIONER

Sadhu Hansraj alias Hasraj Rathod
Age: 39 Years,
Occupation: labour,
Residence: In the compound of
Narmada Sugar Factory, (Dharikheda
Sugar Factory), Tal. Nandod, Dist. Narmada.
Originally R/o : Vasant Nagar, Lasrade,
Dhule, Chadvel (Maharashtra)

VERSUS

OPPONENTS

Vehicle Motor Truck No.GJ-5-BX-7115

- Jagdishbhai Bavaji Vanzara
Age: adult, Occupation: driver,

Residence: 92-A-16-H-1, EWS Avas
Kosak, Surat

- 2 Rameshbhai Premjibhai Vanzara
Age : adult, Occu. : owner,
R/o : Vinus Row House,
Plot No. 44-177, 89, SQMTR Block – 98,
At – Masma, Tal. Olpad, Dist. Surat
- 3 HDFC Ergo General Insurance Co. Ltd., Insurance
1st floor, Sun Complex, Company
Near City Bank, Race Course,
Gotri, Vadodara.

Appearance:

- (1) Mr. S.P. Vyas, Ld. Advocate for the petitioner.
(2) Mr. J.J. Gohil, Ld. Advocate for the opponent No.1 and 2.
(3) Mr. C.B. Modi/M.I. Kalaiwala, Ld. Advocate for the opponent No.3.

**Subject: Claim Petition for Compensation of
Rs.6,00,000/- u/s.166 of the M. V. Act, 1988.**

: J U D G M E N T :

- [1] The present claim petition is filed by the petitioner under the provision of Sec.166 of the M. V. Act, 1988 against the opponents to get compensation as the petitioner sustained grievous injuries in a vehicular accident which occurred on 09.02.2022. It is stated by the petitioner that on 09.02.2022 he was proceeding towards village Vadiya Talav to cut sugarcane from Dharikheda Sugar Factory by way of travelling in trolley of Tractor No. MH18-L-9916. The said tractor was being driven by Karansing

Kishanbhai Rathod, he was driving it at left side of the road, at moderate speed, and when he reached near village Pratapnagar, at that time the opponent No.1 driver of vehicle Truck No. GJ5-BX-7115 came from opposite side in wrong side by way of driving his vehicle in rash and negligent manner with excessive speed and dashed with the tractor and therefore, the accident has happened. The impact was so, that engine and wheel of the tractor divided, tractor fallen down on the divider of the road, the trolley was jumped another (opposite) Rajpipla-Ankleshwar road. It is further stated that, due to the said accident, the petitioner sustained injuries which resulted into permanent disablement. It is stated by the petitioner that an offence was registered before Amletha Police Station against the opponent No.1. It is stated by the petitioner that he has sustained serious fracture and other injuries in different body parts due to the said accident. It is further stated by the petitioner that the accident in question has happened due to the rash and negligent driving on the part of driver opponent No.1 of the offending vehicle Truck No. GJ5-BX-7115. It is further stated that the petitioner has sustained injuries on chest, stomach, right hand, right elbow, chest. Two Ribs has been broken. That after the accident he was taken Rajpipla Civil Hospital but due to grievous injuries he was referred to SSG Hospital but he was taken Mangalam Hospital, Vadodara and then Savita Super Specialty Hospital, Vadodara where he took treatment as an indoor patient. It is further stated that the petitioner has also

taken treatment as an outdoor patient. That he has incurred amount of Rs. 1,50,000/- to Rs. 2,00,000/- towards medical treatment. That he was bed-ridden for a long time. It is further stated that the petitioner was 39 years of age and earning Rs.700/- per day by working as a labour at the time of accident. However, due to the injuries and resultant disability caused to him in the accident, he has suffered loss of future income as well as loss of actual income. He has also suffered mental pain and shock and also suffered expenses for the medical treatment, transaction, special diet, attendant, etc. Ultimately, he has calculated the amount of the compensation as Rs.6,00,000/- under various heads like Pain, Shock & Sufferings; Actual Loss of Income; Attendant Charges; Medical Expenses; Transportation Charges; Special Diet; Loss of Future Income; etc. with interest from the date of filing the claim petition till its realization from the opponents jointly and severally.

- [2] Notices were duly served to the opponents. The opponent Nos. 1 and 2 have appeared through their learned advocate Mr. J.J. Gohil but did not file any written statement.
- [3] The opponent No. 3 filed application Exh. 22 to permit him to file written objection, which was granted by my predecessor on 05/09/2023 with costs. Thereafter, the opponent No. 3 filed application Exh. 23 to re-open stage to file written objection, which was granted by my

predecessor on 05/09/2023 with costs. Thereafter, the opponent No.3 Insurance Company has filed written statement vide Exh.24 in which it is stated that the claim petition filed by the petitioner is not legal, proper and bonafide and hence the same deserves to be dismissed along with cost. It is further stated that all the averments made in the claim petition are denied. It is further stated that the driver of the vehicle No. GJ05-BX-7115 was not holding valid and effective driving licence at the time of accident. The age, income and injuries received by the petitioner is denied by it. It is further stated that the opponent No.3 Insurance Company is not liable to pay any compensation to the petitioner. Further stated that it is the case of contributory negligence hence both the drivers of the vehicles are responsible for accident. In short, the opponent No.3 Insurance Company has denied all the material facts of the claim petition as mentioned by the petitioner and prayed to dismiss the claim petition along with cost.

- [4] The petitioner has produced following documentary as well as oral evidences in the matter :-

Oral Evidence :-

Sr. No.	Evidence	Exh.
1	Oral Evidence of the petitioner Sadhu Hansraj alias Hasraj Rathod	17

Documentary Evidence :-

Sr. No.	Evidence	Exh.
1	Copy of FIR	27
2	Copy of Panchanama of place of incident	28
3	Copy of arrest panchnama of opponent No. 1	29
4	Copy of RC Book of Truck No. GJ05-BX-7115	30
5	Copy of Insu. Policy of Truck No. GJ05-BX-7115	31
6	Copy of charge-sheet against opponent No. 1	32
7	Copy of Injury Certificate from General Hospital, Rajpipla	33
8	Copy of Injury Certificate from Savita Hospital, Vadodara	34 & 41
9	Copy of Aadhar Card of applicant	35 & 38
10	Copy of Pan Card of applicant.	36
11	Copy of Bank pass-book of applicant.	37 & 39
12	Copy of School Leaving Certificate of applicant	40
13	Discharge Summary from Savita Super Specialty Hospital	42
14	Disability Certificate	43

- [5] Ld. Advocate for the petitioner has filed closing pursis vide Exh.44 & 52 also, on record.
- [6] Ld. Advocate for the opponent No.3 Insurance Company has filed closing pursis dated 02.07.2024 vide Exh.53 on record.

- [7] The right to file evidence of opponent Nos. 1 and 2 was closed on 13/08/2024.
- [8] Learned advocate for applicant has filed an application on 14/05/2024 to re-open stage of evidence which was granted by this Tribunal with costs. Thereafter, Ld. Advocate for the petitioner has filed closing pursis dated 02.07.2024 vide Exh.52 on record.
- [9] Ld. Advocate for the petitioner has filed an application Exh. 54 stating that the pleadings, affidavit of petitioner and evidence produced on record be considered as written arguments on behalf of applicants and requested to award compensation in the interest of justice.
- [10] Following Issues have been framed at Exh.16 for the determination of the present claim petition.
- (1)Whether the petitioner proves that petitioner had sustained bodily injuries due to the rash and negligent driving of the driver of vehicle involved in the accident ?
- (2)Whether the petitioner is entitled for the compensation ? If yes, what amount and from whom ?
- (3)What order and award ?
- [11] My findings on the above issues are as under: -
- (1)In the affirmative.
- (2)As per final order.

(3)As per final order.

[12] I have heard learned advocates for the parties.

[13] Ld. Advocate for the petitioner has mainly relied on the contentions raised in the claim petition. He has further argued and submitted that the petitioner has duly proved his case by producing documentary as well as oral evidences on record. It is further submitted that the petitioner was cross-examined by the learned advocate for the opponent No.3 Insurance Company, but nothing fruitful to the case of the opponent No.3 was elicited from his cross-examination. It is further submitted that the petitioner has sustained grievous injuries and resultant disability due to the accident dated 09.02.2022. Lastly, it is prayed to allow the present claim petition in the interest of justice.

[14] Ld. Advocate Mr. C.B. Modi for the opponent No.3 Insurance Company has mainly relied on the contentions raised in the W.S. Exh.24 and filed written arguments vide Exh. 55 in which he has stated that as per FIR accident took place in the opposite direction, hence both the vehicles are involved in the said accident. That there is no age and income proof is produced by the applicant, hence notional income would be considered. Disability @ 31% should be considered. That this is the case of contributory negligence.

:: REASONS ::

ISSUE NO.1

[15] I have carefully gone through the entire documentary as well as oral evidences and taken into consideration arguments of the learned advocates for the contesting parties.

[16] As regards the point of negligence is concerned, the petitioner has filed his affidavit vide Exh.17 and narrated all the averments as made in the claim petition. He has been cross-examined by learned advocate for the opponent No.3 Insurance Company in which the petitioner has admitted that at the time of accident he was sitting in trolley. That there was head-to-head collusion between both the vehicles. He has admitted that he has not produced any evidence to prove his income. At present he is serving in Sugar Factory. But nothing adverse to the claim of petitioner is elicited. The opponent No.3 has not brought any fact on record in the cross-examination of petitioner to reject present claim petition.

[17] Moreover, while perusing documentary evidences FIR Exh. 27 and Charge-sheet produced vide Exh.32, it clearly appears that the accident dated 09.02.2022 has happened with the petitioner regarding which the petitioner himself has lodged the complaint before Amletha Police Station in which he has given the information of date, time, place of accident etc. which are

as per the details mentioned in the present claim petition. It is mentioned in the Panchanama of place of incident (Exh.28) that the vehicle Hyva Truck No. GJ05-BX-7115 was found at the place of incident in damaged condition upto Rs. 50,000/-, its bumper guard is broken, and driver side part is damaged. Further, it is also supported by a very vital document Exh.32 copy of Charge-sheet which shows name of the opponent No.1 as an accused (driver of the vehicle Hyva Truck No.GJ-05-BX-7115), name of petitioner as victim injured person Sadhubhai Hansrajbhai in the alleged accident as well as vehicle registration number of offending vehicle Hyva Truck No.GJ-05-BX-7115 and the copy of Charge-sheet supports the case of the petitioner. While on the other hand, the opponent No.1 has not stepped into witness-box to depose on oath to produce any rebuttal evidence to resist the claim petition as far as his negligence is concerned. Hence, adverse inference is required to be drawn against the opponent No.1.

- [18] As regards the injuries caused to the petitioner due to the accident is concerned, the petitioner has produced copy of Injury Certificate (Exh.33 & 34), Discharge Summary (Exh.42) which show that the petitioner has sustained vehicular accidental injuries. Moreover, the petitioner has also produced Disability Certificate at Exh.43 on record which shows vehicular accidental injuries. This fact is also mentioned in the petitioner's oral evidence at Exh.17 which is in shape of an affidavit. Hence, it is clear that the

petitioner has sustained grievous injuries due to the accident dated 09.02.2022 which is caused by the driver of vehicle Hyva Truck No.GJ-05-BX-7115 means the opponent No.1.

[19] Therefore, considering the above mentioned facts and circumstances, this Tribunal is of the view that the accident has happened due to the rash and negligent driving on the part of opponent No.1 driver of vehicle Hyva Truck No.GJ-05-BX-7115 involved in the accident. In view of the aforesaid discussion, Issue No.1 is decided in the affirmative accordingly.

ISSUE NO.2

[20] The next question is regarding quantum of amount for the compensation. In this regard, age of petitioner, income of petitioner, disability of petitioner, etc. are the relevant factors which are discussed below.

QUANTUM OF COMPENSATION

[21] To determine the amount of compensation, the ratio laid down by the Hon'ble Supreme Court in **2009 ACJ 1298 (SC) in the case of Sarla Verma Vs. Delhi Transport Corporation & Anr.** is to be considered.

[22] As discussed above and in view of the finding of Issue No.1, the petitioner is entitled for the compensation which will be determined hereinafter. So far as the compensation is concerned, the petitioner has mentioned his income

Rs.700/- per day by cutting sugarcane on contract with Dharikheda Sugar Factory at the time of accident. He gets the work of cutting sugarcane for 8 months and staying at compound of Dharikheda Sugar Factory. His wife is also doing labour work with him, for remaining 4 months he goes to his native place and doing agricultural work on his own land and getting produce from the same. However, the petitioner has not produced any evidence regarding his income. The petitioner has mentioned in his cross-examination (Exh.17) that "It is true that no documentary evidence is produced regarding my income at the time of accident". Hence, the income stated by the petitioner can not be believed. Therefore, considering the nature of work of petitioner, age of petitioner, year of accident to be 2022 as well as the then income scenario, income of petitioner can be assessed Rs.9,000/- per month.

[23] The petitioner has mentioned his age to be 39 years in the claim petition at the time of accident. However, considering his date of birth to be 22.06.1983 as mentioned in the copy of his School Leaving Certificate (Exh.40), and accident occurred on date 09.02.2022 this Tribunal comes to the conclusion that he was aged about 39 years at the time of accident.

[24] In **Sarla Verma and others v. Delhi Transport Corporation and others, 2009 ACJ 1298**, Hon'ble Supreme Court has held that Multiplier-15 is applicable

for age group of person between 36 to 40 years. Therefore, considering the age of present petitioner about 39 years at the time of accident as decided above, I come to the conclusion that the petitioner is entitled for the benefit of **Multiplier-15** in the present claim petition.

[25] It appears from the Disability Certificate of petitioner produced at Exh.43 (Mark-19/8) that the petitioner has sustained permanent partial disability of 36% (Thirty six Percentage) of right upper limb, 10% of chest & 15% of right lower limb. Total 61% permanent partial disability. In this regard, learned advocate for the petitioner has filed a purshis vide Exh. 26 in which he has stated that he has no objection if disability be considered 31% body as a whole to which learned advocate Mr. C.B. Modi for Insurance Co. has consented by making an endorsement below Exh.26. **Therefore, the disability is to be considered 31% body as a whole for calculating the future loss of income.**

[26] Considering the petitioner's monthly income to be Rs.9,000/-, he is entitled for Future Loss of Income as per following.

Rs.9,000/- x 31% (reduction in earning capacity)=2,790/-.

2,790/- x 12 x 15 Multiplier = Rs.5,02,200/-.

[27] As regards the actual loss of income is concerned, it appears from the Injury Certificate (Exh.33, 34), Discharge-Summary (Exh.42) as well as Disability

Certificate (Exh. 43) that the petitioner has sustained grievous injuries for which he was admitted in the hospital for the period from 09.02.2022 to 01.03.2022 and hence, it can be believed that he must have not carried out his work at least for three months. Therefore, the petitioner is entitled for the amount of **Rs.27,000/- (Rs.9,000/- x 3 months) towards Actual Loss of Income.**

[28] Looking to the Injury Certificate (Exh.33, 34), Discharge-Summary (Exh.42) as well as Disability Certificate (Exh. 43), the petitioner has sustained grievous injuries and fracture. Therefore, considering the injuries and disability, the petitioner must have suffered pain, shock and suffering and therefore some amount is required to be awarded for the same and it will be just and proper to consider **Rs.50,000/- for the Pain, Shock and Sufferings.**

[29] The petitioner has produced Medical Bills, x-rays, pathology reports, on record but the applicant has not produced original medical bills, he has produced original reports for the test. In this regard, ld advocate Mr. S.P. Vyas for the petitioner has filed a purshis vide Exh. 56 in which he has declared that the hospital bills of petitioner was borne/paid by employer company but the expenses of medicines, follow-up treatment etc was incurred by petitioner himself. Here in the present case, the petitioner has not produced any original medical bills, therefore, he

is not entitled for any amount **under the head of Medical Expenses.**

[30] Considering the above mentioned facts and circumstances, the petitioner must have incurred expenses for the **Transportation, Special Diet & Attendant** during the period of treatment for grievous injuries and if **Rs.20,000/-** will be awarded to the petitioner under these heads, then it will be just and proper.

[31] Therefore, the total compensation to the petitioner is as under.

Rs.5,02,200/-	Future Loss of Income
Rs.27,000/-	Actual Loss of Income
Rs.50,000/-	Pain, Shock & Sufferings
Rs.20,000/-	Transportation, Special Diet & Attendant
Rs.5,99,200/-	Total Compensation that the petitioner is entitled.

Therefore, as discussed above, the present petitioner is entitled for the amount of Rs. Rs.5,99,200/- as compensation.

[32] The next Issue is regarding the liability to pay the said amount of compensation to the petitioner. Here in the present case, the opponent No.1 is driver of vehicle Truck No. No.GJ-05-BX-7115 and the petitioner has duly proved the same by producing copies of FIR (Exh.27), Charge-sheet (Exh.32). The opponent No. 2 is owner of offending

Truck No. No.GJ-05-BX-7115 namely Rameshbhai Premjibhai Vasava which is proved by R. C. Book (Exh.30). Further, copy of Insurance Policy of vehicle (Exh.31) describes insurance period from 28.10.2021 to 27.10.2022 for the vehicle Truck No. No.GJ-05-BX-7115 which is involved in the accident. The date of accident is 09.02.2022 and therefore there is a coverage of the insurance at the relevant time of the accident. Therefore, opponent No.3 being the Insurance Company is required to indemnify opponent No.2, the owner of the vehicle.

[33] Therefore, considering the above discussion, I come to the conclusion that all the opponents are jointly and severally liable to pay the amount of compensation as discussed above to the petitioner.

[34] Therefore, considering the above mentioned facts and circumstances, I answer all the issues accordingly and pass the following final order in the interest of justice.

:: ORDER ::

- [1] The present claim petition No.62/2022 is partly allowed.
- [2] The opponents are ordered to pay **Rs.5,99,200/-** (Rupees Five Lacs Ninety Nine Thousand Two Hundred Only) as compensation to the petitioner, together with proportionate cost and interest @ 9% p.a. from the date of claim petition till realization.

- [4] The amount of compensation u/s.140 of the M. V. Act, if any, paid or deposited under the principle of No Fault Liability, will be adjusted from the aforesaid amount of compensation awarded in this final adjudication.
- [5] The opponents are directed to deposit the amount of compensation with interest in this Tribunal within one month from the date of this order.
- [6] Amount of Court fees, if recoverable; be recovered from the awarded amount of compensation.
- [7] After deducting the Court fees, the remaining amount is required to be disbursed to the petitioner in proportion of 70% amount as a Fixed Deposit amount with any nationalized bank for a period of 5 years in the petitioner's name and remaining 30% amount is required to be given to the petitioner in his bank account by account payee cheque as per the rules after due identification/verification.
- [8] As regards Fixed Deposit is concerned, no loan, any advance or pre-mature withdrawal be drawn without prior permission of this Tribunal. However, the petitioner will be entitled to withdraw periodical interest accrued on Fixed Deposit.
- [9] In view of the directions given by the **Hon'ble Apex Court in the case of Bajaj Allianz General Insurance Co. Ltd. Versus Union of India & Others in Writ Petition (Civil) No.534/2020 dated 16.03.2021 and 16.11.2011**, the

bank details of Savings Bank Account of Motor Accident Claims Tribunal, Rajpipla is reproduced here-in-under with a direction to the opponents to deposit the awarded amount of compensation in the below mentioned account details through RTGS/NEFT and thereafter inform the M.A.C.T., Branch, District Court, Rajpipla, through e-mail mentioned here-in-under.

Account Name	:	Motor Accident Claim Tribunal, Narmada.
Account Number	:	40771170793
Bank / Branch	:	State Bank of India, Main Branch, Rajpipla
IFSC Code	:	SBIN0000465
MICR Code	:	393002001
E-mail	:	mact-dcourt-nar@gujarat.gov.in

[10] Opponents shall bear their own cost.

[11] Award be drawn accordingly.

[12] Yadi be sent to the Nazir, District Court, Rajpipla.

Signed and pronounced in the open Court today on 4th day Of January, 2025.

Date: 04/01/2025
Place: Rajpipla.

(Rameshkumar Thakorbbhai Panchal)
(GJ00413)
M.A.C.T. (Main)
Narmada, At -Rajpipla